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No. 87-1774

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

METROPOLITAN COUNTY BOARD OF EDUCATION OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, *et al.*,
Petitioners,

vs.

STATE OF TENNESSEE, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals For the Sixth Circuit

REPLY BRIEF AND SUPPLEMENTAL APPENDIX

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vs.

STATE OF TENNESSEE, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals For the Sixth Circuit

REPLY BRIEF

The issues herein concern the proper interpretation of this Court's decision in *Milliken v. Bradley,* 433 U.S. 267 (1977) (*Milliken II*), and more broadly, the ability of district courts across the country to provide complete remedial relief and to insure quality education to victims of state-imposed segregation. The Sixth Circuit improperly interpreted *Milliken II,* contrary to decisions from the Seventh and Eighth Circuits, which hold that the Eleventh Amendment poses no bar to orders requiring state financial participation in local desegregation plans, and that such orders are an appropriate and necessary exercise of a federal court's equity jurisdiction. Although full argument on

the merits of these questions is properly reserved for briefing on the merits, the Petitioners take this opportunity to reply to the Respondents' Brief in Opposition:

1. The Respondents strain in their attempt to distinguish *Milliken II* and the myriad of cases from the Courts of Appeal for the Seventh and Eighth Circuits which have rejected Eleventh Amendment defenses and required state defendants to fund significant portions of local desegregation plans. The Respondents argue pursuant to *Papason v. Allain,* 106 S.Ct. 2932, 2941 (1986), that a court most "look to the substance rather than the form of the relief sought." Contrary to their assertion, the substance of the remedy sought and ordered in this case is consistent with that sought and ordered in *Milliken II* and other cases.[1] As stated in the Board's Petition for Certiorari, Michigan, Missouri, Arkansas and Indiana were in actuality nothing more than recalcitrant finanial participators. Insofar as the Petitioners are aware, in none of these cases did the state defendants actually develop or implement a local desegregation remedy. Instead, as in *Milliken II,* the remedy was proposed and/or implemented by the local school district, and the state defendants merely paid a portion of the costs

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[1] *E.g. Liddell v. Board of Education of the City of St. Louis,* 667 F.2d 643 (8th Cir.), *cert. denied,* 454 U.S. 1081 (1982); *Liddell v. Board of Education,* 839 F.2d 400 (8th Cir. 1988); *Little Rock School District v. Pulaski County Special School District,* 839 F.2d 1296 (8th Cir. 1988); *Jenkins v. Missouri,* 672 F.Supp. 400 (W.D. Mo. 1987); *United States v. Board of School Commissioners of Indianapolis,* 677 F.2d 1185 (7th Cir.), *cert. denied,* 459 U.S. 1086 (1982).

through the legal actions of the local school districts themselves.[2]

The reasons for this typical course of events are apparent when the activities of the Tennessee Respondents in Nashville are examined. In its opinion of March 9, 1983, the District Court stated that "the state defendants have had an opportunity to participate in the formulation of the desegregation plan [for Nashville] for the 1983-84 school year, a plan which has not been adopted by this court."[3] The record in this case shows that the Respondents declined to participate in devising the remedy ultimately ordered by the court, even though their input was sought at every step.[4] The District Court's order approving the desegregation plan for Nashville and ordering its implementation is not directed specifically to either the local Board or the Respondents, and it specifically notes that the Respondents offered no objections to implementation.[5] It is little wonder that the District Court later looked to the state for financial participation rather than to specifically amend its implementation order to require the Respondents to educate or bus students. Had it ordered the Respondents to educate and/or bus students, which even the Respondents appear to concede would be permissible

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[2] It was the local Detroit school district, not the plaintiffs in *Milliken* or the state defendants who developed the educational components for which the state defendants were required to pay. It was also the local school district who sought contribution from the state defendants to fund those components. See *Bradley v. Milliken,* 540 F.2d 229, 242 (6th Cir. 1976) (Detroit Board, not plaintiffs, appealed from allocation of costs of the district court); *Bradley v. Milliken,* 402 F.Supp. 1096, 1103 (E.D. Mich. 1975) (Detroit Board of Education submitted desegregation plan, including educational components).

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[3] Respondents' Appendix, p. 30.

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[4] Supplemental Appendix B, p. A-6.

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[5] Supplemental Appendix A, p. A-1.

under the Eleventh Amendment, then most certainly the result would have been no different than that in *Millikien II*. That is, the Nashville Board would be implementing the desegregation remedy it designed with some state funds.

Simply put, in all of these cases, as in the instant case, the money the state is required to pay is *directly tied* to a desegregation plan designed to directly benefit those victims of discrimination who suffer currently from previous state-imposed or maintained segregation. The Sixth Circuit and the District Court previously found that such current vestiges of state-imposed segregation remain. 687 F.2d 814 (6th Cir. 1982) (A. 59-62); 615 F.Supp. 1139 (M.D. Tenn. 1985) (A. 31). Even under the Respondents' theory, all the District Court needs to do is simply amend its order requiring implementation to specify that the Respondents provide educational programs and busing designed to eliminate those vestiges rather than to merely require that the plan be implemented. Surely this is form over substance.

2. The Sixth Circuit noted the conflict between its opinions and those from the Seventh and Eighth Circuits regarding the Eleventh Amendment without distinguishing those cases,[6] and relied upon a *dissenting* opinion from the Seventh Circuit for the proposition that an award of desegregation costs against a state is not an appropriate exercise of federal equity jurisdiction.[7] These references, without more, demonstrate that the

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[6] The Sixth Circuit cites the Seventh and Eighth Circuit opinions and indicates that the circuits are divided. 836 F.2d at 995, n. 4 (A. 17).

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[7] *United States v. School Commissioners of City of Indianapolis*, 677 F.2d 1185, 1190-91 (7th Cir.) (Posner, J. dissenting), *cert. denied*, 459 U.S. 1086 (1982).

Sixth Circuit itself was clearly aware that its opinion was presenting a conflict in the circuits, yet the Respondents argue that there is no conflict between this case and those in other circuits because the issues are somehow different.

The Respondents' attempt to distinguish this case from others because the school system, rather than the victims of discrimination, is seeking relief, is also strained and should be rejected. First, in many of these cases, efforts seeking state funding were led by the local school districts or local authorities when the costs of desegregation became apparent.[8] Most importantly, acceptance of such a distinction would set a dangerous precedent, by requiring victims of discrimination to continually police these cases because a local school system is precluded from assuring these victims that they will be provided a desegregated quality educational experience.

Finally, the Respondents' reliance on *United States v. Texas Education Agency,* 790 F.2d 1262, *cert. denied,* 107 S.Ct. 874 (1986), is misplaced. In that case, there was never any finding of state liability nor any effort made to divide the cost of the desegregation remedy. In this case, both the District Court and the Court of Appeals have held, while the state defendants have been parties, that vestiges of state-imposed segregation remain, and the District Court has made a finding of liability. The remedy fashioned by the District Court in 1983, while the Respondents sat mute, was founded on the proposition that black achievement was lagging behind white achievement, and that racial imbalance in certain schools had persisted, all resulting from the inherent problems encountered over the years

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[8] See n. 2, *supra. See also Little Rock Special School District v. Pulaski County Special School District,* 778 F.2d 404, 408 (8th Cir. 1985); *Jenkins v. State of Missouri,* 672 F.Supp. 400, 402, 405, 409 (W.D. Mo. 1987); *Liddell v. State of Missouri,* 731 F.2d 1294, 1298 (8th Cir. 1983).

by the parties and the District Court in eliminating the results of historical segregation.[9] With this history, the District Court appropriately applied the concept of continuing constitutional violation set forth repeatedly by this Court,[10] a violation the Respondents have an unmet affirmative duty to correct.

3. In the Respondents' argument that the District Court exceeded its equity jurisdiction by requiring the state of Tennessee to pay 60 percent of the current costs of Metro's desegregation plan, they refer to none of the many cases, including *Milliken II,* which approve such remedies. As indicated in the Petition for Certiorari, Courts of Appeal, including the Sixth Circuit, have required other states to pay significant portions of local desegregation costs, to wit: Missouri, Arkansas, Michigan, Ohio, and Indiana, holding that such remedies are a permissible exercise of federal equity jurisdiction.[11]

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[9] The District Court stated in 1981 that "the good faith efforts of this [school] Board to achieve desegregation have been amply demonstrated. . . ." (A. 121.) It was the racial imbalance resulting from the court's efforts in 1971 to devise a comprehensive desegregation plan that led to the new 1983 transportation remedy because the court's plan encouraged population shifts to parts of the county not previously included in the plan. Referring to its own 1971 efforts to remedy desegregation, the District Court stated that "[t]he perimeter line drawn by the court in 1971 . . . has encouraged white flight to the suburbs and to those school zones unaffected by the 1971 order. . . . The resegregation, resulting, at least in part, from the nonetheless good faith efforts of the School Board in the implementation of the court's order, amounts to a *de jure* segregation." (A. 189-91.)

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[10] *Milliken v. Bradley,* 433 U.S. 267 (1977); *Columbus Board of Education v. Penick,* 443 U.S. 449 (1979); *Dayton Board of Education v. Brinkman,* 443 U.S. 526 (1979).

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[11] See cases refereed to in Petition for Certiorari, pp. 21-22. For example, in the seminal *Milliken* case, Michigan was required to pay 75 percent of the cost of purchasing 150 school buses and 50 percent of educational components. *Bradley v. Milliken,* 540 F.2d 229, 240, 246 (6th Cir. 1976), *aff'd* 433 U.S. 267 (1977).

The Respondents argue that there is no basis for the 60 percent figure set by the District Court, yet the basis is actually clearer than in many other cases. In virtually all of the cases requiring state financial support, there is no real discussion of the percentage awarded nor is there any readily apparent benchmark for the award.[12] Here, the District Court apparently calculated the percentage based upon the increased expenditures for programs which the Court of Appeals had mandated to remove the remaining vestiges of state-imposed segregation.[13] As indicated previously in the Petition for Certiorari, the District Court had sought to pay for remedial programs through decreasing the transportation expense, a decrease the Court of Appeals would not approve. When faced with the task of requiring implementation of *both* extended busing *and* extensive educational components in light of the school board's budget, the District Court appropriately placed the onus for the increase on the state defendants.

Thus, the remedy ordered by the District Court is not, as the Respondents argue, merely the settlement of an internal controversy between political subdivisions. Rather, it is based upon the District Court's reasoned efforts to insure that the Nashville school system can provide quality education for the victims for whom this litigation was orginally brought. This case is no different from those many cases in other circuits and in the Sixth Circuit itself which have approved remedies designed to achieve this result.

[12] Little is contained in any of these opinions regarding the amount of relief, other than general pronouncements regarding a state's relative culpability along with the financial realities in the relevant school district. *See United States v. Board of School Commissioners of the City of Indianpolis,* 677 F.2d 1185 (7th Cir. 1982) (100 percent of costs awarded); *Liddell v. State of Missouri,* 731 F.2d 1294, 1333, (8th Cir. 1984) (approximately 80 percent of costs awarded); *Bradley v. Milliken,* 540 F.2d 229, 246 (6th Cir. 1976) (50 percent of costs awarded). See also Petition for Certiorari, pp. 21-22.

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[13] See Petition for Certiorari, pp. 10-11, n. 4.

CONCLUSION

For the reasons previously stated in their Petition for Certiorari, the Petitioners respectfully submit that this case raises issues and interpretations of this Court's previous rulings about which the circuits are not in agreement. These important issues are continuing to arise across the nation, and direction from this Court is necessary to insure uniformity and guard against confusion.

Respectfully submitted,

WILLIS & KNIGHT
215 Second Avenue North
Nashville, TN 37201
(615) 259-9600

By: WILLIAM R. WILLIS, JR.

By: MARIAN F. HARRISON

Attorneys for Petitioners,
Metropolitan County Board of
Education of Nashville and
Davidson County, *et al.*

CERTIFICATE OF SERVICE

I hereby certifiy that a copy of the foregoing response has been mailed this 8th day of June, 1988, to the following counsel:

Avon N. Williams, Jr.
Richard H. Dinkins
WILLIAMS & DINKINS
203 Second Avenue North
Nashville, TN 37201

Theodore M. Shaw
NAACP Legal Defense Fund
99 Hudson Street, 16th Floor
New York, NY 10019

W.J. Michael Cody
Patricia J. Cottrell
Office of the Attorney General
450 James Robertson Parkway
Nashville, TN 37219

/s/ MARIAN F. HARRISON

SUPPLEMENTAL APPENDIX

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

Civil Action Nos. 2094, 2956

Robert W. Kelley, et al.,
Plaintiffs,

vs.

The Metropolitan County Board of Education of
Nashville and Davidson County, Tennessee, et al.,
Defendants.

ORDER

(Received for Entry 8:30 A.M., June 1, 1983)

In conformity with the Memorandum entered this day approving a new desegregation plan for Metropolitan Nashville and Davidson County, the plan as presented by the Metropolitan Nashville Board of Education on April 14, 1983, is hereby approved and ordered to be implemented.

ENTER this 31 day of May, 1983.

/s/ Thomas A. Wiseman, Jr.
United States District Judge

Approved For Entry:

WILLIS & KNIGHT

By: /s/ William R. Willis, Jr.

By: /s/ Marian F. Harrison
215 Second Avenue, North
Nashville, Tennessee 37201

Attorneys for Defendant Board
of Education

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

Civil Action Nos. 2094, 2956

Robert W. Kelley, et al.,
Plaintiffs,

vs.

The Metropolitan County Board of Education of
Nashville and Davidson County, Tennessee, et al.,
Defendants.

MEMORANDUM

(Received for Entry 8:30 A.M., June 1, 1983)

On April 14, 1983, this Court held a hearing on the Board of Education's "Plan Submitted in Response to Opinion of the Court of appeals for the Sixth Circuit," filed by the Board on April 8, 1983. Testimony explaining the plan, utilizing maps, statistics, and other exhibits, was offered by the Board, and opportunity for cross-examination and/or objection was afforded to the Plaintiffs and the State Defendants. No objections were made by either the Plaintiffs or the State Defendants.

From the testimony and exhibits submitted, the Court finds that the plan presented by the Board as described in its pleading of April 8, 1983, and the amendment thereto filed on April 14, 1983, meets fully the criteria set out by the Court of Appeals in its opinion on July 27, 1982, and the mandate issued pursuant thereto. Specifically, the pupil assignment plan submitted by the Board begins with the existing ratio of blacks to whites in the population as a starting point to maximize integration as defined by the Court of Appeals. That is, every effort has been made to draw zones for schools which will approximate the 33% black school population presently existing in the school system, with a deviation of 15% on either side of this percentage. Where

deviations from this ratio have occurred and will occur, they are the result of factors beyond the Board's control, including but not limited to demographic considerations which would necessitate extraordinarily long transportation distances to the nearest concentration of black or white students to correct the imbalances. It is clear from the proof that the greatest possible effort has been made to maximize desegregation within the guidelines set forth by the Court of Appeals, and accordingly the plan is approved in its entirety.

The pleadings filed by the Board on April 8, 1983, and on April 14, 1983, along with the exhibits thereto and the maps, exhibits, and testimony describing the plan are incorporated into this decree by reference. In addition, the Agreement in Principle entered into by the Plaintiffs and the Board of Education and filed as Exhibit No. 2 in this cause, is incorporated into this decree by reference. The procedures contained therein for retention of jurisdiction by this Court supersede previous orders and restrictions which have governed this case. These procedures are ordered as follows:

> "[Under the plan as approved, the Board of Education retains] the flexibility to make refinements where necessary in the plan to improve the integrity of zone lines, to improve feeder patterns, and to improve the utilization of buildings, so long as these improvements do not adversely impact the pupil assignment plan."
>
> "[Jurisdiction will be retained] pending implementation of the long range plan, at which time, or five years after the entry of this order, whichever occurs first, any party may move the Court to have the system declared unitary and the case dismissed."
>
> "[While jurisdiction is retained by this Court,] the Board shall report to the Court and counsel for all parties on or before January 1st of each year the following information:

1. An annual update of the Thirteen Year Analysis of Enrollment Patterns;

2. Numbers and use of portables during the current school year;

3. Any proposed new construction or expansion to house more students or regular programs; and

4. Any proposed zone changes with number of students involved by race, grade and school."

"Should any party have any objections to the information contained in the report, those objections must be filed within 45 days from the date the report is filed."

In addition to the pupil assignment plan, it should be noted that this Court has previously approved and ordered, and by this decree continues to approve and order the educational components contained in the previous plan (remediation, "Together We Can, Together We Will," black history, the middle school concept, and magnet school programs), and specifically approves the creation of a magnet school for the academically talented at Hume Fogg High School, a magnet school serving grades 5 - 8 at Caldwell Elementary School, and the Martin Luther King, Jr. Magnet School for the Health Sciences to be established at Pearl when the new Pearl-Cohn High School is completed.

Specific matters relating to faculty and personnel which are now governed by stipulation entered into between the parties on December 8, 1982, are not affected by this order.

An appropriate Order will enter.

/s/ Thomas A. Wiseman, Jr.
United States District Judge

Approved For Entry:

WILLIS & KNIGHT

By: /s/ William R. Willis, Jr.

By: /s/ Marian F. Harrison

Attorneys for Defendant Board
of Education

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Nos. 2094, 2956

Judge Wiseman

Robert W. Kelley, et al.,

vs.

Metropolitan County Board of Education of
Nashville and Davidson County, Tennessee, et al.,

vs.

State of Tennessee; Lamar Alexander, Governor of the
State of Tennessee; Robert L. McElrath, Commissioner
of Education; and State Board of Education,

AFFIDAVIT OF MARIAN F. HARRISON

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

The Affiant, Marian F. Harrison, being first duly sworn, hereby deposes and says:

1. I am a partner in the law firm of Willis & Knight. Along with William R. Willis, Jr., I represent the Metropolitan Nashville Board of Education, et al.

2. On or about February 21, 1983, I drafted the letter attached as Exhibit 1 for William R. Willis' signature. The purpose of the letter was to invite the State defendants to participate in the planning process for the new desegregation plan. At the time this letter was written, the planning process was in its initial stages.

3. Sometime after March 1, 1983, we received the letter attached hereto as Exhibit 2 from Mr. Robert B. Littleton, in

response to our previous letter. He stated that because the State's motion to vacate the Court's order bringing the State into the case was still pending, the State did not wish to participate in the Board's development of a new plan. Based on this letter, I filed a motion to dispose of the State defendants' motion to vacate the order making them parties. Subsequently, on March 9, 1983, the District Court denied the State's motion.

4. After the District Court denied the State's motion to vacate, I called General Frank Scanlon on, to my recollection, at least two occasions to reissue our invitation. At no time did I have any indication from him or anyone else from the State that the State defendants wished to participate in the formulation of the desegregation plan.

5. The State's position was in stark contrast to that of the attorney for plaintiffs, Senator Avon Williams. Senator Williams, at our invitation, made after thecommunications with the State set forth above, indicated a desire to see the plan the Board was then considering. He was shown such plan, and negotiation based on the plan then being discussed in public by the Board began.

6. Shortly after negotiations began, I talked again with Frank Scanlon and Bob Littleton. I then, from Arkansas, dictated by telephone a confirming letter on March 24, 1983, to General Bob Littleton, the purpose of which was to reconvey my invitation that the State counsel and State defendants review the plan under consideration. This letter was signed on my behalf by Dick Lodge of our firm. (Exhibit 3)

7. On March 25, 1983, we received another letter from General Robert Littleton, which *finally* accepted our offer. (Exhibit 4)

8. To my knowledge, at our invitation, General Scanlon attended a subsequent meeting of the School Board. I wrote a letter the next day to General Littleton reciting events of the past

weeks. (Letter of March 29, 1983, Exhibit E.) We continued to suggest to General Scanlon, and other counsel for the State defendants, that they and their clients might want to have a demonstration of the maps and charts being developed at the Board. It is my understanding that staff members from the Board of Education made a presentation to General Scanlon at his convenience, which was taped by General Scanlon for showing to his clients.

9. In spite of my many invitations to the State defendants to participate in the desegregation process, I must say that it appears they never intended to be involved in the planning process.

FURTHER THE AFFIANT SAITH NOT.

/s/ Marian F. Harrison

Sworn to and subscribed before me
on this 19th day of December, 1984.

/s/ Virginia S. Crimmons
Notary Public

My Commission Expires: 11/1/87

EXHIBIT 1

Law Offices
WILLIS & KNIGHT
Two Fifteen Second Avenue, North
Nashville, Tennessee 37201
Telephone
Area 615-259-9600

February 21, 1983

The Honorable Robert Littleton
Assistant Attorney General
State of Tennessee
450 James Robertson Parkway
Nashville, Tennessee 37219

Re: Kelley, et al. v. Metropolitan
Board of Education, et al.

Dear Bob:

I want to make sure that you and your clients understand that their participation in the development of a new desegregation plan for Metropolitan Nashville and Davidson County would be welcomed. Indeed, any assistance that you and your clients could provide is invited. Should you desire, the planning team would appreciate any suggestion you might have, and we invite you to participate in any and all sessions of the team and/or the Board regarding this plan.

I can obtain a schedule of the planning team meetings for you should you wish to participate, and we will keep you advised of our progress.

Very truly yours,

WILLIS & KNIGHT

/s/ Bill

William R. Willis, Jr.

WRW:vc

cc: Mr. Kent Weeks
Mr. Charles Frazier

EXHIBIT 2

STATE OF TENNESSEE

OFFICE OF THE ATTORNEY GENERAL
450 James Robertson Parkway
Nashville, Tennessee 37219

William M. Leech, Jr.
Attorney General & Reporter

William B. Hubbard
Chief Deputy Attorney General

Robert B. Littleton
Special Deputy for Litigation

Deputy Attorney's General
Donald L. Corlew
Jimmy G. Creecy
Robert A. Grunow
William J. Haynes, Jr.
Robert E. Kendrick
Michael E. Terry

Honorable William R. Willis, Jr.
WILLIS & KNIGHT
Attorneys at Law
Two Fifteen Second Avenue, North
Nashville, TN 37201

RE: Kelley, et al. v. Metropolitan
Board of Education, et al.

Dear Bill:

Than you for your letter dated February 21, 1983 inviting the state's participation in the development of a new desegregation plan by the Metropolitan Board of Education.

Due to the fact that the state's motion to vacate the Court's order bringing the state into the case is still pending, the state does not wish to participate in the Board's development of a new plan at this time. If the state's motion to vacate is denied prior to the hearings on the new plan, we must, as counsel for the state, make it clear that the state reserves the right to present such proof as to the plan as may be deemed necessary and appropriate, including the possibility of proposing alternative plans, if necessary.

We would appreciate your keeping us advised of the Board's progress.

Sincerely yours,

/s/ Bob Littleton
ROBERT B. LITTLETON
Special Deputy Attorney General

RBL:mb
cc: Hon. Kent Weeks,
Chairman, Metropolitan Board of Education
Hon. Avon N. Williams
Attorney at Law
Hon. Richard H. Dinkins
Attorney at Law
Hon. Frank Scanlon
Assistant Attorney General

EXHIBIT 3

Law Offices
WILLIS & KNIGHT
Two Fifteen Second Avenue, North
Nashville, Tennessee 37201

March 24, 1983

HAND DELIVERED

General Robert B. Littleton
Special Deputy Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219

Re: *Kelley, et al. v. Metropolitan Board of Education, et al.*

Dear Bob:

This letter serves as a written invitation to you and your clients to view the proposed plan which is now the subject of negotiations between the Plaintiffs and the Defendant Board of Education. As I suggested to Frank Scanlon on Monday evening and to you on Tuesday, I think it would be in the best interest of all parties if you and your clients understood the proposal now on the table. I understand that in my absence on Wednesday, Dick Lodge again discussed with you the need to arrange a meeting for this purpose. Should you and your clients agree that this meeting is both necessary and beneficial, we should plan to have it immediately.

I look forward to hearing from you early today.

Very truly yours,

WILLIS & KNIGHT

Marian F. Harrison

MFH:vc

EXHIBIT 4

STATE OF TENNESSEE

OFFICE OF THE ATTORNEY GENERAL
450 James Robertson Parkway
Nashville, Tennessee 37219

March 25, 1983
HAND DELIVERED

Ms. Marian F. Harrison
Attorney at Law
WILLIS & KNIGHT
215 Second Avenue, North
Nashville, Tennessee 37201

Re: *Kelley, et al. v. Metropolitan Board of Education, et al.*

Dear Marian:

This is to acknowledge receipt of your letter of March 24, 1983, inviting the State defendants to view a proposed pupil assignment plan which is the apparent product of private negotiations between the School Board and the plaintiffs, of which we had no notice or opportunity to participate.

This office accepts your offer. Of course, due to the facts that our status in the lawsuit was only recently resolved and we have not been privy to negotiations, it is impossible to say at this juncture what position the State defendants will take regarding any plan negotiated by the Board and plaintiffs, or eventually adopted by the Metropolitan Board of Education.

Sincerely yours,

/s/ Robert B. Littleton
ROBERT B. LITTLETON
Special Deputy Attorney General

RBL:jc

cc: Honorable Avon N. Williams

EXHIBIT 5

LAW OFFICES
WILLIS & KNIGHT
Two Fifteen Second Avenue, North
Nashville, Tennessee 37201

March 29, 1983

HAND DELIVERED

The Honorable Robert B. Littleton
Special Deputy Attorney General
State of Tennessee
450 James Robertson Parkway
Nashville, Tennessee 37219

Re: *Kelley, et al. v. Metropolitan Board of Education, et al.*

Dear Bob:

Pursuant to our invitation, General Scanlon attended the Board meeting last night at which a desegregation plan to which the plaintiffs have agreed in principle was presented. However, he again could not tell me a firm time when the State defendants could view the plan or discuss any proposed changes or modifications with us. Instead, General Scanlon indicated that he expected part of the State's position to be that they had no input into this or any other plan. We must, of course, reiterate our continuing exception to this position.

Since the Court's status conference in January, we have invited you time and time again to participate or to discuss proposed plans with us, to which invitations your clients have never responded affirmatively with a time or date. Nevertheless, you stated in your letter of March 25, 1983, that you had not been a party to any negotiations. Our repeated invitations to you to participate or to view proposals certainly negate this position.

Unfortunately for us all, we have a deadline which, although extended, must be met in order to comply with the Court of Appeals decision and to provide a timely resolution to this issue for the school system. As you are aware, the Board may vote on the proposal before it tonight, and any lack of participation by your clients must be deemed to have been generated by them, not by the Board.

Indeed, we stand ready at any time to discuss the proposal with you.

Very truly yours,

WILLIS & KNIGHT

/s/ Marian F. Harrison

MFH:vc

cc: The Honorable William M. Leech, Jr.
The Honorable William B. Hubbard
The Honorable Frank Scanlon
Avon N. Williams, Jr., Esquire

P.S. I have just had another telephone conference with General Scanlon wherein he reiterated your clients' desire to view the current proposal before the Board. However, again logistics present a problem for you, and we agreed to arrange for a vidio taping tomorrow of the proposal. As stated above, however, the Board may vote on the proposal this evening, but the video taping is nevertheless acceptable to us.

M. F. H.